

**Executive Summary – Enforcement Matter – Case No. 47608**  
**Bio Energy (Austin), LLC**  
**RN100632629**  
**Docket No. 2013-2018-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Tessman Road Landfill Gas Power Station, 7000 East IH-10, San Antonio, Bexar County

**Type of Operation:**

Landfill gas-to-energy plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 8, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$40,990

**Amount Deferred for Expedited Settlement:** \$8,198

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$16,396

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$16,396

Name of SEP: Railroad Commission of Texas

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** January 7, 2013 through July 15, 2013

**Date(s) of NOE(s):** July 30, 2013

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**Bio Energy (Austin), LLC**  
**RN100632629**  
**Docket No. 2013-2018-AIR-E**

***Violation Information***

1. Failed to report all instances of deviations. Specifically, the Respondent submitted a deviation report for the reporting period from September 1, 2011 through March 31, 2012 with no deviations to report and did not submit a deviation report for the reporting period from March 1, 2012 through August 31, 2012. However, during these reporting periods, there were deviations for the failure to report numerous unscheduled startup and shutdown activities that occurred in June 2012, the failure to conduct quarterly observations from July 1, 2011 through August 31, 2012, and the failure to obtain a Federal Operating Permit ("FOP") revision [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A), FOP No. O2621, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to display the certified nitrogen oxides ("NOx") emissions from the electric generating unit in pounds of pollutant per megawatt hour. Specifically, six electric generating units were observed without the certification displayed [30 TEX. ADMIN. CODE § 116.115(c), Standard Permit Registration No. 48823, Air Quality Standard Permit for Electric Generating Units (4)(A), and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to conduct quarterly visible emissions observations for stationary vents. Specifically, the Respondent did not have a certified opacity reader to conduct visible emissions observations from July 1, 2011 to December 31, 2012 [30 TEX. ADMIN. CODE § 122.143(4), FOP No. O2621, Standard Terms and Conditions Nos. 3.A.(iv)1 and 3, 3.B.(iii)1 and 2, and 3.C., and TEX. HEALTH & SAFETY CODE § 382.085(b)].
4. Failed to obtain an administrative revision to FOP No. O2621 for a change of address [30 TEX. ADMIN. CODE § 122.210(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
5. Failed to maintain a copy of the Standard Permit at the Plant. Specifically, the Respondent did not maintain the most current version of Standard Permit Registration No. 48823 which was issued on November 20, 2001 [30 TEX. ADMIN. CODE § 116.615(8), Standard Permit Registration No. 48823, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective actions:

- a. By July 1, 2013, displayed the certified NOx emissions at each of the six electric generating units; employed a certified opacity reader to ensure visible emissions observations are conducted and recorded as required; and began maintaining a copy of Standard Permit 48823 at the Plant.

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**RN100632629**  
**Docket No. 2013-2018-AIR-E**

b. By September 30, 2013, completed training to ensure that all deviations are reported and the deviation reports are submitted in a timely manner; and

c. On March 21, 2014, filed a renewal application for FOP No. O2621 which included a change of address.

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

2. The Order will also require the Respondent to:

a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the FOP renewal application and revision request filed on March 21, 2014 within 30 days after the date of such requests, or by any other deadline specified in writing;

b. Within 365 days, submit written certification to demonstrate that the FOP authorization renewal and revision has been obtained.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** David Carney, Enforcement Division, Enforcement Team 5, MC 149, (512) 239-2583; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**Respondent:** Dennis Bollinger, Vice President - Business Development, Bio Energy (Austin), LLC, 3322 West End Avenue, Suite 115, Nashville, Tennessee 37203

**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2013-2018-AIR-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Bio Energy (Austin), LLC</b>
<b>Penalty Amount:</b>	<b>Thirty-Two Thousand Seven Hundred Ninety-Two Dollars (\$32,792)</b>
<b>SEP Offset Amount:</b>	<b>Sixteen Thousand Three Hundred Ninety-Six Dollars (\$16,396)</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Pre-Approved SEP</b>
<b>Third-Party Administrator:</b>	<b>Railroad Commission of Texas</b>
<b>Project Name:</b>	<b><i>Alternative Fuels Clean School Bus Replacement Program</i></b>
<b>Location of SEP:</b>	<b>Statewide, Preference for Bexar County</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**a. Project**

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Railroad Commission of Texas** for the *Alternative Fuels Clean School Bus Replacement Program*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the contribution will be used to reduce nitrogen oxides, volatile organic compounds, carbon monoxide, and particulate matter emissions by replacing older diesel buses with newer buses that meet more stringent emission standards.

The Third-Party Administrator shall use the SEP Offset Amount for up to 100% of the purchase price of a propane or natural gas powered school bus that is model year 2010 or newer to public school districts and public charter schools to replace a diesel school bus that is model year 2002 or older. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used for the direct cost of implementing the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions which contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. In addition, by encouraging less school bus idling, this SEP contributes to public awareness of environmental matters.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Railroad Commission of Texas SEP** and shall mail the contribution with a copy of the Agreed Order to:

Alternative Energy Division  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.







# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	29-Jul-2013	<b>Screening</b>	13-Aug-2013	<b>EPA Due</b>	26-Apr-2014
	<b>PCW</b>	16-Jun-2014				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Bio Energy (Austin), LLC
<b>Reg. Ent. Ref. No.</b>	RN100632629
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47608	<b>No. of Violations</b>	5
<b>Docket No.</b>	2013-2018-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	David Carney
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$48,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,400
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Notes: Enhancement for one NOV with same or similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$9,937
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$978  
Approx. Cost of Compliance \$7,668

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$40,463
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	1.3%	<b>Adjustment</b>	\$527
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to recover the avoided cost of compliance associated with Violation No. 3.

<b>Final Penalty Amount</b>	\$40,990
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$40,990
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$8,198
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$32,792
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Screening Date 13-Aug-2013

Docket No. 2013-2018-AIR-E

PCW

Respondent Bio Energy (Austin), LLC

Policy Revision 3 (September 2011)

Case ID No. 47608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100632629

Media [Statute] Air

Enf. Coordinator David Carney

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same or similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 5%

Screening Date 13-Aug-2013

Docket No. 2013-2018-AIR-E

PCW

Respondent Bio Energy (Austin), LLC

Policy Revision 3 (September 2011)

Case ID No. 47608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100632629

Media [Statute] Air

Enf. Coordinator David Carney

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(A), Federal Operating Permit ("FOP") No. 02621, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)

## Violation Description

Failed to report all instances of deviations. Specifically, the Respondent submitted a deviation report for the reporting period from September 1, 2011 through March 31, 2012 with no deviations to report and did not submit a deviation report for the reporting period from March 1, 2012 through August 31, 2012. However, during these reporting periods, there were deviations for the failure to report numerous unscheduled startup and shutdown activities that occurred in June 2012, the failure to conduct quarterly observations from July 1, 2011 through August 31, 2012, and the failure to obtain a FOP revision.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor
		x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 2

501 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$7,500

Two single events are recommended for the two reports.

## Good Faith Efforts to Comply

10.0% Reduction

\$750

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent completed the corrective actions on September 30, 2013, after the July 30, 2013 Notice of Enforcement ("NOE").

Violation Subtotal \$6,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$357

Violation Final Penalty Total \$7,218

This violation Final Assessed Penalty (adjusted for limits) \$7,218

# Economic Benefit Worksheet

**Respondent** Bio Energy (Austin), LLC

**Case ID No.** 47608

**Reg. Ent. Reference No.** RN100632629

**Media** Air

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$4,750	30-Mar-2012	30-Sep-2013	1.50	\$357	n/a	\$357
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Actual total expense provided by Respondent to ensure that all deviation reports are correctly completed and submitted. The Date Required is the due date for the first deviation report and the Final Date is the date the corrective actions were completed.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$4,750

**TOTAL**

\$357

Screening Date 13-Aug-2013

Docket No. 2013-2018-AIR-E

PCW

Respondent Bio Energy (Austin), LLC

Policy Revision 3 (September 2011)

Case ID No. 47608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100632629

Media [Statute] Air

Enf. Coordinator David Carney

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 116.115(c), Standard Permit Registration No. 48823, Air Quality Standard Permit for Electric Generating Units (4)(A), and Tex. Health &amp; Safety Code § 382.085(b)

Violation Description

Failed to display the certified nitrogen oxides ("NOx") emissions from the electric generating unit in pounds of pollutant per megawatt hour. Specifically, six electric generating units were observed without the certification displayed.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 6

165 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$22,500

Six single events are recommended, one for each engine.

## Good Faith Efforts to Comply

25.0% Reduction

\$5,625

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent completed the corrective actions on July 1, 2013, prior to the July 30, 2013 NOE.

Violation Subtotal \$16,875

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$18,234

This violation Final Assessed Penalty (adjusted for limits) \$18,234

# Economic Benefit Worksheet

**Respondent** Bio Energy (Austin), LLC  
**Case ID No.** 47608  
**Reg. Ent. Reference No.** RN100632629  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$600	17-Jan-2013	1-Jul-2013	0.45	\$14	n/a	\$14

Notes for DELAYED costs

Estimated expense to display the certified NOx emissions. The Date Required is the date of the initial non-compliance and the Final Date is the date the corrective actions were completed.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$600

**TOTAL**

\$14

Screening Date 13-Aug-2013

Docket No. 2013-2018-AIR-E

PCW

Respondent Bio Energy (Austin), LLC

Policy Revision 3 (September 2011)

Case ID No. 47608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100632629

Media [Statute] Air

Enf. Coordinator David Carney

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 122.143(4), FOP No. 02621, Special Terms and Conditions Nos. 3.A.(iv)1 and 3, 3.B.(iii)1 and 2, and 3.C., and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct quarterly visible emissions observations for stationary vents. Specifically, the Respondent did not have a certified opacity reader to conduct visible emissions observations from July 1, 2011 to December 31, 2012.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			x

Percent 7.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could have been exposed to insignificant amounts of pollutants which would not have exceeded levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,250

\$1,750

## Violation Events

Number of Violation Events 6

549 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$10,500

Six single events are recommended for each calendar quarter that visible emissions observations were not conducted from July 1, 2011 to December 31, 2012.

## Good Faith Efforts to Comply

25.0% Reduction

\$2,625

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent completed the corrective actions on July 1, 2013, prior to the July 30, 2013 NOE.

Violation Subtotal \$7,875

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$549

Violation Final Penalty Total \$8,509

This violation Final Assessed Penalty (adjusted for limits) \$8,509

# Economic Benefit Worksheet

**Respondent** Bio Energy (Austin), LLC  
**Case ID No.** 47608  
**Reg. Ent. Reference No.** RN100632629  
**Media** Air  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$918	7-Jan-2013	1-Jul-2013	0.48	\$22	n/a	\$22

Notes for DELAYED costs

Actual total expense provided by Respondent to retain a certified opacity reader to conduct and record visible emissions readings and recordings. The Date Required is the date of the investigation and the Final Date is the date the corrective actions were completed.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$400	30-Sep-2011	31-Dec-2012	1.25	\$25	\$502	\$527
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct visible emissions observations (\$100 per quarter x 4 quarters per year). The Date Required is the last day of the first calendar quarter that the observation was due and the Final Date is the last day of the last calendar quarter that the observation was due.

Approx. Cost of Compliance	\$1,318	<b>TOTAL</b>	\$549
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Screening Date 13-Aug-2013

Docket No. 2013-2018-AIR-E

PCW

Respondent Bio Energy (Austin), LLC

Policy Revision 3 (September 2011)

Case ID No. 47608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100632629

Media [Statute] Air

Enf. Coordinator David Carney

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 122.210(a) and Tex. Health &amp; Safety Code § 382.085(b)

Violation Description

Failed to obtain an administrative revision to FOP No. Q2621 for a change of address.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

345 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

x (mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$47

Violation Final Penalty Total \$3,989

This violation Final Assessed Penalty (adjusted for limits) \$3,989

# Economic Benefit Worksheet

**Respondent** Bio Energy (Austin), LLC

**Case ID No.** 47608

**Reg. Ent. Reference No.** RN100632629

**Media** Air

**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$500	17-Jan-2013	30-Nov-2014	1.87	\$47	n/a	\$47
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated expense to revise the FOP to update the address. The Date Required is the date of the initial non-compliance and the Final Date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$500

**TOTAL**

\$47

Screening Date 13-Aug-2013

Docket No. 2013-2018-AIR-E

PCW

Respondent Bio Energy (Austin), LLC

Policy Revision 3 (September 2011)

Case ID No. 47608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100632629

Media [Statute] Air

Enf. Coordinator David Carney

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 116.615(8), Standard Permit Registration No. 48823, and  
Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain a copy of the Standard Permit at the Plant. Specifically, the  
Respondent did not maintain the most current version of Standard Permit  
Registration No. 48823 which was issued on November 20, 2001.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release

Major

Harm

Minor

Actual

Potential

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification

Major

Moderate

Minor

x

Percent 15.0%

Matrix  
Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

165 Number of violation days

mark only one  
with an xdaily  
weekly  
monthly  
quarterly  
semiannual  
annual  
single event

x

Violation Base Penalty \$3,750

One single event is recommended.

## Good Faith Efforts to Comply

25.0% Reduction

\$937

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

(mark with x)

Notes

The Respondent completed the corrective actions on July  
1, 2013, prior to the July 30, 2013 NOE.

Violation Subtotal \$2,813

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$3,040

This violation Final Assessed Penalty (adjusted for limits) \$3,040

# Economic Benefit Worksheet

**Respondent** Bio Energy (Austin), LLC  
**Case ID No.** 47608  
**Reg. Ent. Reference No.** RN100632629  
**Media** Air  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	17-Jan-2013	1-Jul-2013	0.45	\$11	n/a	\$11

Notes for DELAYED costs

Estimated expense to ensure that copy of the Standard Permit is maintained at the Plant. The Date Required is the date of the initial non-compliance and the Final Date is the date the corrective actions were completed.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$11

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN600343040, RN100632629, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN600343040, Bio Energy (Austin), LLC **Classification:** SATISFACTORY **Rating:** 0.16

**Regulated Entity:** RN100632629, TESSMAN ROAD LANDFILL GAS POWER STATION **Classification:** SATISFACTORY **Rating:** 0.44

**Complexity Points:** 8 **Repeat Violator:** NO

**CH Group:** 06 - Electric Power Generation

**Location:** 7000 E IH 10 SAN ANTONIO, TX 78219-4802, BEXAR COUNTY

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**MUNICIPAL SOLID WASTE PROCESSING REGISTRATION** 48005

**AIR NEW SOURCE PERMITS ACCOUNT NUMBER** BG1233R

**AIR OPERATING PERMITS PERMIT** 2621

**PETROLEUM STORAGE TANK**

**REGISTRATION** 79697

**AIR NEW SOURCE PERMITS REGISTRATION** 44769

**AIR NEW SOURCE PERMITS AFS NUM** 4802900623

**AIR OPERATING PERMITS ACCOUNT NUMBER** BG1233R

**AIR EMISSIONS INVENTORY ACCOUNT NUMBER**

**BG1233R**

**Compliance History Period:** September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

**Date Compliance History Report Prepared:** April 07, 2014

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 07, 2009 to April 07, 2014

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** David Carney

**Phone:** (512) 239-2583

**Site and Owner/Operator History:**

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1 August 13, 2009 (765398)

Item 2 November 27, 2010 (872791)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	05/20/2013	(1089023)	
	Self Report?	NO		Classification: Moderate
	Citation:	30 TAC Chapter 101, SubChapter A 101.10(e) 5C THSC Chapter 382 382.085(b)		
	Description:	Failure to submit a 2012 Emissions Inventory. CATEGORY B19 (g)(3).		

#### F. Environmental audits:

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

### J. Early compliance:

N/A

### Sites Outside of Texas:

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BIO ENERGY (AUSTIN), LLC  
RN100632629**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2013-2018-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Bio Energy (Austin), LLC ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a landfill gas-to-energy plant located at 7000 East Interstate Highway 10 in San Antonio, Bexar County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 4, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Forty Thousand Nine Hundred Ninety Dollars (\$40,990) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Sixteen Thousand Three Hundred Ninety-Six Dollars (\$16,396) of the administrative penalty and Eight Thousand One Hundred Ninety-Eight Dollars (\$8,198) is deferred contingent upon the Respondent's

timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Sixteen Thousand Three Hundred Ninety-Six Dollars (\$16,396) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent implemented the following corrective actions at the Plant:
  - a. By July 1, 2013, displayed the certified nitrogen oxides ("NOx") emissions at each of the six electric generating units; employed a certified opacity reader to ensure visible emissions observations are conducted and recorded as required; and began maintaining a copy of Standard Permit 48823 at the Plant.
  - b. By September 30, 2013, completed training to ensure that all deviations are reported and the deviation reports are submitted in a timely manner; and
  - c. On March 21, 2014, filed a renewal application for Federal Operating Permit ("FOP") No. O2621 which included a change of address.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to report all instances of deviations, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A), FOP No. O2621, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted from January 7, 2013 to July 15, 2013. Specifically, the Respondent submitted



- a deviation report for the reporting period from September 1, 2011 through March 31, 2012 with no deviations to report and did not submit a deviation report for the reporting period from March 1, 2012 through August 31, 2012. However, during these reporting periods, there were deviations for the failure to report numerous unscheduled startup and shutdown activities that occurred in June 2012, the failure to conduct quarterly observations from July 1, 2011 through August 31, 2012, and the failure to obtain a FOP revision.
2. Failed to display the certified NOx emissions from the electric generating unit in pounds of pollutant per megawatt hour, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Standard Permit Registration No. 48823, Air Quality Standard Permit for Electric Generating Units (4)(A), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted from January 7, 2013 to July 15, 2013. Specifically, six electric generating units were observed without the certification displayed.
  3. Failed to conduct quarterly visible emissions observations for stationary vents, in violation of 30 TEX. ADMIN. CODE § 122.143(4), FOP No. O2621, Standard Terms and Conditions Nos. 3.A.(iv)1 and 3, 3.B.(iii)1 and 2, and 3.C., and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted from January 7, 2013 to July 15, 2013. Specifically, the Respondent did not have a certified opacity reader to conduct visible emissions observations from July 1, 2011 to December 31, 2012.
  4. Failed to obtain an administrative revision to FOP No. O2621 for a change of address, in violation of 30 TEX. ADMIN. CODE § 122.210(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted from January 7, 2013 to July 15, 2013.
  5. Failed to maintain a copy of the Standard Permit at the Plant, in violation of 30 TEX. ADMIN. CODE § 116.615(8), Standard Permit Registration No. 48823, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted from January 7, 2013 to July 15, 2013. Specifically, the Respondent did not maintain the most current version of Standard Permit Registration No. 48823 which was issued on November 20, 2001.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Bio Energy (Austin), LLC, Docket No. 2013-2018-AIR-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Sixteen Thousand Three Hundred Ninety-Six Dollars (\$16,396) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the FOP renewal application and revision request filed on March 21, 2014 within 30 days after the date of such requests, or by any other deadline specified in writing; and
  - b. Within 365 days after the effective date of this Agreed Order, submit written certification as described below, to demonstrate that the FOP authorization renewal and revision has been obtained. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Air Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

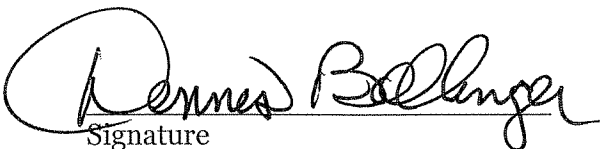
9/25/14  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

July 1, 2014  
\_\_\_\_\_  
Date

DENNIS BOLLINGER  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Bio Energy (Austin), LLC

VICE PRESIDENT - BUSINESS DEVELOPMENT  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.

**Attachment A**  
**Docket Number: 2013-2018-AIR-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Bio Energy (Austin), LLC</b>
<b>Penalty Amount:</b>	<b>Thirty-Two Thousand Seven Hundred Ninety-Two Dollars (\$32,792)</b>
<b>SEP Offset Amount:</b>	<b>Sixteen Thousand Three Hundred Ninety-Six Dollars (\$16,396)</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Pre-Approved SEP</b>
<b>Third-Party Administrator:</b>	<b>Railroad Commission of Texas</b>
<b>Project Name:</b>	<b><i>Alternative Fuels Clean School Bus Replacement Program</i></b>
<b>Location of SEP:</b>	<b>Statewide, Preference for Bexar County</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**a. Project**

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Railroad Commission of Texas** for the *Alternative Fuels Clean School Bus Replacement Program*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the contribution will be used to reduce nitrogen oxides, volatile organic compounds, carbon monoxide, and particulate matter emissions by replacing older diesel buses with newer buses that meet more stringent emission standards.

The Third-Party Administrator shall use the SEP Offset Amount for up to 100% of the purchase price of a propane or natural gas powered school bus that is model year 2010 or newer to public school districts and public charter schools to replace a diesel school bus that is model year 2002 or older. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used for the direct cost of implementing the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions which contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. In addition, by encouraging less school bus idling, this SEP contributes to public awareness of environmental matters.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Railroad Commission of Texas SEP** and shall mail the contribution with a copy of the Agreed Order to:

Alternative Energy Division  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.